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HONOURABLE SRI JUSTICE P.S.NARAYANA

WRIT PETITION NO:5532 of 2007

DATED:10-12-2007

Between:

1. G.V.Hemalatha and another

..... PETITIONERS

AND

1. Authorized Officer, State Bank of India, (Stressed Assets Resolution Center), Region 1, Visakhapatnam and another

.....RESPONDENTS

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ORDER:

Heard Sri K.V.Simhadri, learned counsel representing the writ petitioner and Smt.Chintalapudi Lakshmi Kumari, learned counsel representing the respondents.

2. This Court issued Rule Nisi on 20-03-2007 and granted interim stay on certain conditions.

3. Sri K.V.Simhadri, learned counsel representing the writ petitioners, had taken this Court through the contents of the affidavit filed in support of the writ petition and would submit that the

petitioners are ready and willing to discharge the rest of the amount, if any, due to the respondents.

4. On the contrary, the learned counsel representing the respondents would maintain that the procedure as contemplated by the provisions of the Act had been complied with and there is no legal infirmity or illegality in the impugned action.

5. The second petitioner had sworn to the affidavit filed in support of the writ petition. The first petitioner is the wife of the second petitioner. It is stated that his wife purchased the property of an extent admeasuring 267 sq.yards in Sy.Nos.95/2 to 4, 95/6 to 11, 17 and 96/1, 2, 3 and 4 to 13, 15, 16 and 18 HUDA approved layout situated in Gopalapatnam SRO, Pendurthi Mandal, Laxmipuram Panchayat, Gollavallivanipalem village, Visakhapatnam District (within the Municipal Corporation Limits) vide Regd.Sale deed on 10-01-2000. He submitted that the petitioners 1 and 2 intend to construct a double storied building over the said property and with a view to raise a loan they approached the 2nd respondent bank for securing a loan for construction of a double storied building in the above said property.

6. Further, it is stated that the second respondent bank had sanctioned a loan of Rs.10 lakhs for construction of the double storied building in the above said property. He stood as the co-

applicant for the said loan. The amount had been released by the second respondent bank on 09-09-2004 for Rs.5,00,000/- and 11-09-2004 for Rs.3,00,000/- and 17-09-2004 for Rs.1,00,000/- being third instalment and the final instalment for Rs.1,00,000/- was released on 27-09-2004, totaling to Rs.10 lakhs and Rs.9,556/- as an EMI. The petitioner has to repay to the bank in 10 years.

7. It is also stated that consequently they had obtained the housing loan and the payment of EMI was irregular but however, the petitioner had paid in the financial year upto 31st March, 2005 Rs.49,900/- and similarly 2005-2006 financial year they are irregular to repayment of the loan and only Rs.19,556/- was paid. Unfortunately, due to the first petitioner's ill-health she could not continue her tuitions consequently the tutorials could not be run and the repayment was delayed.

8 . The second respondent's demand notices were not received by the petitioners as the petitioners have shifted their residence. The petitioner also communicated the change of address to the second respondent bank vide her letter dated 06-06-2006 and requested him to communicate the amounts due as on that date and expressed the preparedness to pay the amounts. But unfortunately, in spite of receipt of the registered post letter there is no response from the second respondent bank.

9. It is further stated that the second respondent bank during

personal visit of the petitioners had directed them to deposit a sum of Rs.50,000/- and accordingly the said amount was deposited on 01-08-2006. Again on 23-10-2006, Rs.1,00,000/- was also paid to the said account, with a view to keep the account in order and clear the outstanding dues in the account. He submitted that the petitioner is holding the statement of accounts issued by the bank to show the amounts paid to the bank.

10. Be that as it may, the first respondent being authorized officer of the bank has invoked the Securitization and Reconstruction of Finance Asset and Act, 2002 (hereinafter in short referred to as 'Act' for the purpose of convenience) under Section 13 (2) of the Act and issued notice on 26-07-2006 in respect of Account No.10364900989 demanding the whole amount and again the possession notice on 03-02-2007 by which time the petitioner admittedly paid the substantial amounts, in spite of the same, the bank proceeded for the auction sale of the property without taking into account the petitioners payments by recalling the total amount by a sale notice dated 18-02-2007 within 30 days from the date of possession notice dated 03-02-2007 which is highly illegal and arbitrary.

11. The petitioner, in spite of the same, to show *bona fides* and strive to clear the outstanding paid Rs.2,79,456/- for the period from 20-09-2004 to 02-02-2007 in total as against 31 months totaling

of Rs.2,96,236/-. The action of the respondents in going ahead with the auction sale by recalling the total amount in less than 3 years as against 10 years of repayment schedule is totally unethical, unjust and unreasonable. The petitioners submit that if total amounts are recalled prematurely by the respondent-bank, the very purpose of providing housing loan would be defeated. The petitioner is willing to continue to regularly pay the instalments and as such proceeding with auction sale as per the auction sale notice dated 18-02-2007 and consequently calling for the sealed tender by tender notice from the public for the sale of the petitioners property as per the paper publication in Hindu news paper on 04-03-2007 in Visakhapatnam Edition, fixing the date

as 19-03-2007 at 5.00 PM at the first respondent office is totally illegal and arbitrary. If the property is put to auction the petitioners put to irreparable loss and injury and do not have any other residential premises stand in their name.

12. It is relevant to state at this stage that various properties are referred to in the tender notice and they do not pertain to any transaction in the name of the company or either of the petitioners. The second respondent is not allowing the petitioners to complete the small finishings and for leasing it to third parties or for the personal use and the petitioners were forced to keep the house under lock and key and directed them to not to use the same. In

view of the same, from the date of the demand notice the petitioners are not enjoying the property either for themselves or for lease to secure certain amounts which will be repaid by way of instalments. Because of which also petitioners are unable to repay the installment amount regularly. On the other hand, the petitioners are constrained to stay in a leased premises, thereby, the petitioners are deprived of enjoyment of the property even before the auction is conducted and physical possession is taken by the bank. As on today the possession is not taken by the bank. In such circumstances, the writ petitioners approached this Court. It is also brought to the notice of this Court that some payments had been made by the writ petitioners.

13. In the counter-affidavit filed by respondents 1 and 2, it is stated that the second respondent bank i.e., Industrial Estate Branch sanctioned the loan to the petitioners for construction of double storied building in the year 2004 and subsequently since the account became non-performing asset, the said account was transferred to the first respondent branch and therefore it is authorized and competent to file the counter-affidavit on behalf of the second respondent.

14. It is further stated that the writ petition itself is not maintainable in the light of the provisions of the Act and the same is liable to be dismissed on this ground alone.

15. Further, it is averred that the writ petitioners 1 and 2 approached the second respondent bank and obtained loan of Rs.10,00,000/- in the year 2004 for construction of double storied building by mortgaging the land of an extent admeasuring 267 sq.yds. in Survey No.95/2 to 4, 95/6 to 11 and 96/1 to 2, 3 and 4 to 13, 15, 16 and 18 HUDA approved layout situated in Gopalapatnam S.R.O., Pendurthy Mandal, Lakshmipuram Panchayat, Gollavallivanipalem, Visakhapatnam District, within the Municipal Corporation Limits and going to construct over an extent by spending the sanctioned loan amount. The writ petitioner constructed the double storied building by utilizing the loan amount. But he was failed to repay the loan amount and became irregular in 2005-2006 financial year. Thereafter, the writ petitioner is not paid monthly instalments and it became non-performing asset in the years 2006. In spite of number of demands the petitioners have not responded and they were come forward to clear the arrears. For recovery of the arrears the respondent-bank has chosen to proceed under the Act.

16. It is further stated that the writ petitioner is one of the guarantors in a batch of advances given to the family members of Vommi family. Most of the said advances have become NPAs. It is also stated that as per the prevailing norms of income recognition and asset classification issued by the Reserve Bank of India, the

account shall be classified NPA borrower-wise but not asset wise. As such, since all the accounts involving the petitioner are classified NPAs, the present account which is being canvassed before this Court has also been classified as NPA. It is also stated that the first respondent branch issued notice under Section 13 (2) of the Act calling the demand of outstanding of the loan as on 30-03-2006 and the same was published on 26-07-2006 in local news papers and the same was served on the writ petitioners also. In pursuant to the said notice, the writ petitioners have not chosen to make any objection. After following procedure, the first respondent bank by exercising the powers conferred under Sec.13 (4) of the said Act issued a possession notice on-------- 2007. Thereafter, the sale notice has been issued on 18-02-2007 calling for the sealed tenders from the public for sale of the schedule property and the same was published on 04-03-2007 in Hindu news paper, Visakhapatnam Edition. Questioning the said sale notice, the present writ petition is filed and this Court granted interim stay of sale of the schedule property on condition of depositing Rs.30,000/- on 15-03-2007 and further depositing Rs.20,000/- within one week by orders dated 12-03-2007 in W.P.M.P.No.7049/2007 in W.P.No.5532/2007.

17. Further, it is stated that the writ petitioners had not filed any appeal against the proceedings under Section 13 (4) of the Act which provides a remedy by way of appeal. The writ petitioners

cannot prohibit the respondents from recovery of outstanding dues by filing such writ petition and the writ petition is liable to be dismissed.

18. These are the respective stands taken by the parties.

19. The learned counsel for the petitioners made a representation that the petitioners are ready and willing to discharge the outstanding loan amount due to the respondents.

20. At this stage, it is for the petitioners to approach the respondents and let the respondents take appropriate decision in this regard in the event of the petitioners approaching the respondents. It is also needless to say that the petitioners are at liberty to invoke the alternative remedy of appeal, if they are so advised. Except making this observation, no positive directions as such can be granted in this writ petition.

21. The writ petition is accordingly dismissed subject to the above observations. No order as to costs.

10th December, 2007

SKM